

Texas Electric Service Co. and International Brotherhood of Electrical Workers, Local Union 1004, Petitioner. Case 16-RC-8270

May 28, 1982

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer T. P. Sheridan of the National Labor Relations Board. After the hearing, pursuant to Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 16, the case was transferred to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.¹

Upon the entire record in this case, the Board finds:

1. The Employer is a Texas corporation with its central office in Fort Worth, Texas, and is engaged in the generation, transmission, distribution, and sale of electricity within the State of Texas as a public utility. Its annual volume of business is in excess of \$250,000. We therefore find that the Em-

ployer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization within the meaning of the Act seeking to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Petitioner seeks a unit of all hourly paid employees of Texas Electric Service Co. assigned to the Transmission and Distribution Departments in the Fort Worth Area,² excluding guards, professional employees, office clerical employees, and supervisors as defined in the Act. The Employer contends that only a systemwide unit of transmission and distribution employees is appropriate for purposes of collective bargaining. In addition, the Employer contends that whatever the scope of the unit determined—systemwide or geographical—certain employee classifications not requested by the Union must be included. There is no history of collective bargaining for any of the employees in the unit sought by the Petitioner, and no labor organization seeks to represent the employees in a more comprehensive unit.

The employer is a public utility engaged in the generation, transmission, distribution, and sale of electricity.

It serves an area in northern Texas that extends from Fort Worth westward to Monahans and north to Wichita Falls. The Employer's principal office, including its central control center for power distribution, is in Fort Worth.

In 1968, when a similar question arose concerning the scope of the appropriate unit,³ the Employer had been acquiring electrical energy from generating plants fueled by natural gas and located throughout the area it served. The electricity so acquired had been for the most part locally distributed. Since 1968, faced with rising fuel costs and the need for greater economy of operation, the Employer has modified its method of power generation and distribution. Approximately half of its generating plants are now fueled by lignite coal, and it has increased the sophistication of the equipment in such a manner that, at least since 1968, the energy produced at any generating facility can be transmitted throughout the service area. Thus, for example, energy generated at Monahans may be transmitted

¹ At the hearing the Employer attempted to introduce into evidence certain affidavits purporting to demonstrate that its employees wish to be represented in a systemwide unit. The Hearing Officer rejected the exhibits as irrelevant, and, on appeal, the Board affirmed that ruling. In its brief to the Board the Employer has renewed its motion for introduction of evidence of employee preference. We hereby deny the Employer's motion. To be sure, the desires of employees are considered relevant in a unit determination at least as expressed through such objective means as authorization cards and presented to the Board as the required showing of interest when an election petition is filed. Subjective evidence of employee desire for inclusion or exclusion is seldom considered, however. See *Ideal Laundry and Dry Cleaning Co.*, 152 NLRB 1130, 1131, fn. 6 (1965). To the extent that employee preference is relevant to this unit determination, we find that it favors the unit requested by the Petitioner. Since neither the Petitioner nor any other labor organization has expressed an interest in representing the employees of the Employer in a systemwide unit, a finding that only such a unit is appropriate would frustrate the expressed desire of the Fort Worth Area employees to assert their statutory right to select a representative for purposes of collective bargaining.

We note further that nothing in the statute requires that the unit for bargaining be the *only* appropriate or even the *most* appropriate unit. The Act requires only that the unit determined be appropriate to ensure to the employees involved the fullest freedom in exercising their statutory rights. See *Federal Electric Corporation, Western Test Range*, 157 NLRB 1130, 1132 (1966).

² The Fort Worth "division" is called the Fort Worth Area.

³ *Texas Electric Service Co.*, Case 16-RC-4865 (not reported in volumes of Board Decisions). In the 1968 unit determination the Regional Director for Region 16 found appropriate a unit comprised solely of distribution employees in the Fort Worth Area.

to the Fort Worth area for distribution if for some reason the energy generated by plants nearer to Fort Worth is insufficient for the area's needs or is more expensive to produce.⁴

The systemwide transmission of electrical energy is monitored and controlled by dispatchers at the Employer's main office in Fort Worth. The dispatchers work in a basement area known as the nerve center, containing recording instruments that indicate the supply of power everywhere in the system and devices by means of which the dispatchers can communicate with the system's major load centers and thereby reroute power if necessary.

The Employer's operation is divided into six administrative divisions that correspond to the geographic divisions within the area served by the utility. The Eastland, Big Springs, Sweetwater, Western, and Wichita Falls Divisions are contiguous with each other but not with the Fort Worth Area.⁵

The Employer's management structure, insofar as it is relevant to the present determination, is divided between the distribution and transmission functions of the utility system.⁶ The vice president in charge of distribution has authority over all activities from the time electricity leaves the substations en route to customers; those activities include meter reading, billing, and collections. Employees assigned to distribution operations report to foremen in 15 service centers.⁷ The service center managers report to division managers in five of the Employer's administrative divisions and in the remaining division, the Fort Worth Area, to the operation and construction manager. The operation and construction manager reports to H. M. Garrett, who reports directly to the vice president in charge of distribution, as do the division managers of the administrative divisions outside Fort Worth. There are approximately 592 employees assigned to

the distribution department of the Employer's operation.

The vice president in charge of transmission is responsible for the operation of the power plants and the transmission system, for the engineering functions, and for purchasing services. Employees assigned to transmission operations report to foremen in five transmissions offices, one of which is located in Fort Worth.⁸ The superintendents at the transmissions offices report to Superintendent of Transmission M. H. Ball, who reports to Superintendent of Power R. S. Beard, who reports directly to the vice president in charge of transmissions operations. The transmissions department of the Employer's enterprise employs approximately 220 employees.

Petitioner seeks to represent distribution and transmission employees in the Employer's administrative division, the Fort Worth Area. In the Fort Worth Area there are four distribution service centers, one of which is designated as an Operating Center, and one transmissions office. Also located in the Fort Worth Area is the Employer's administrative headquarters, including the nerve center. Approximately 323 employees assigned to distribution operations and 69 employees assigned to transmissions operations work in the Fort Worth Area.⁹

The Employer's labor relations policies are centrally developed and coordinated by the personnel department at the administrative headquarters in Fort Worth. These policies include uniform, systemwide job classifications, job descriptions, and pay grades. All employees receive the same paid holidays; the same pension, insurance, sick leave, and vacation benefits; and the opportunity to participate in the Employer's thrift plan, college tuition plan, and stock purchase plan. Except for trained interviewers,¹⁰ there are no permanent personnel department employees at the Division level. Nevertheless, a significant number of personnel matters are handled locally, that is, within the unit sought by the Petitioner.

Supervisors in the Fort Worth Area have the initial responsibility of screening and recommending applicants for hire and sole responsibility and authority to determine whether a probationary employee's performance is satisfactory. Single-step progression through the pay grades within a job classification requires only local recommendation and approval.¹¹ Promotion from one job classifica-

⁴ At the hearing, Vice President Scarth testified that prior to the installation of the new equipment and before the Employer was required to reduce its production costs, one of the three Fort Worth Area generating plants was kept in constant operation to ensure that the downtown area would have sufficient electricity. None of the generating plants are now in operation on a 24-hour basis as a matter of policy. However, the record is unclear as to how much electricity, if any, used in the Fort Worth Area is not produced there, and it does not appear that the Employer's functional operation has altered significantly in this regard since 1968, at which time electricity was for the most part locally produced and consumed.

⁵ The Eastland Division office is located 95 miles from the Fort Worth headquarters; the Big Springs office is 260 miles away; that of Western, 300 miles; and that of Wichita Falls, 120 miles.

⁶ Neither the vice president in charge of distribution nor the vice president in charge of transmission has authority to determine the Employer's labor policies. That function is performed by the centralized personnel department.

⁷ Eastland has two such service centers; Wichita Falls, one; Big Springs, two; Sweetwater, two; Western four; and Fort Worth, four.

⁸ Sweetwater has no transmission office. Its transmission construction, maintenance, and repair requirements are met by the Big Spring Division.

⁹ These figures include employees in the disputed classifications.

¹⁰ Some divisions have personnel trained in interviewing techniques by the personnel department. These employees spend most of their time, however, performing office clerical work.

¹¹ A double progression requires vice presidential approval.

tion to another for an employee assigned to Fort Worth is initiated by recommendations from local supervisors and must be approved by higher management with the Fort Worth Area before being submitted to a vice president for approval. Lists of candidates eligible for promotion are compiled and maintained at the local level.

With regard to the Employer's day-to-day operations, local supervisors make work assignments, schedule overtime and vacations, and grant personal time off and leaves of absence. Employees report to their immediate supervisors concerning, *inter alia*, on-the-job injuries, payroll mistakes, tool replacement, and application for promotion or transfer.

Although the Employer publishes an employee handbook containing work rules and company policies, which is distributed throughout the system, each local supervisor including Fort Worth Area supervisors is responsible for ensuring that employees working under him are informed of the Company's standards and employment practices. In addition, supervisors within the unit sought hold discussions with employees regarding violations of company rules and issue warnings for such violations. A supervisor has the authority to suspend an employee without pay for as many as 5 working days as a disciplinary measure, without previously consulting with the central personnel department, and may also suspend an employee without pay pending investigation into misconduct, which is conducted locally at the division manager level. After receiving the recommendation of the immediate supervisor and of the personnel department, the division manager or transmission superintendent makes the final termination decisions.

Based on the foregoing facts, we conclude that the Employer has not centralized the administration, direction, and control of its operations to a degree that requires a finding that only a system-wide unit of transmission and distribution employees is appropriate for purposes of collective bargaining. The Employer's administrative divisions, including the Fort Worth Area, have substantial autonomy in the local application of centralized personnel policies and in the conduct of labor relations, particularly in the hiring, firing, discipline, promotion, and transfer of employees.

Moreover, the Fort Worth Area functions as an administratively and geographically distinct division of the Employer's utility system, and the employees whom the Petitioner seeks to represent do not exercise systemwide responsibilities.¹² In addition,

the transmission and distribution employees in the Fort Worth Area form a stable and cohesive group of employees. Although available jobs are posted throughout the system, the employee handbook indicates that the Employer's policy is to give first consideration to qualified persons within the local work group, and the record reveals that in fact only 20 employees, of a complement of approximately 392, have transferred into the Fort Worth Area since 1968. Furthermore, interchange between employees in the Fort Worth Area and those in other administrative divisions is limited. In an emergency, such as a tornado or an ice storm, Fort Worth employees may be sent to other divisions, and in 1979 such emergency work accounted for 202 of the 220 days worked outside the Fort Worth Area. The remaining 18 days were attributable to the operation of the Employer's 95-foot boom truck, which is assigned to Fort Worth but used as needed throughout the system. In 1980 only one Fort Worth employee appears to have spent a significant amount of time outside his division; assigned to inspection of power lines and service center equipment, this employee worked 59 of the 67 days of nonemergency work outside the Fort Worth Area. There were no emergency assignments in 1980. In 1979, six transmission employees from the Eastland Division worked a total of 315 days in the Fort Worth Area, but their duties were limited to inspection work at a power plant then under construction. In 1980, 20 transmission employees from the Eastland Division worked a total of 535 days constructing and inspecting a new substation near Fort Worth; when completed, the substation will be operated and maintained by Fort Worth employees. Thus, except for emergencies and special projects, Fort Worth Area employees have little interchange with employees from other divisions, and their work contacts are for the most part confined to other members of the unit requested by Petitioner.

The Employer argues that since the area serviced by distribution employees is not congruent to that served by the transmission employees, the proposed unit is not based on either geographic, departmental, or administrative coherence. We disagree. The employees in the unit requested by the Petitioner are engaged in the functionally integrated task of producing and delivering electricity in Fort Worth and its environs. The record does indicate that the transmission employees serve a slightly larger geographic area than the distribution employees, but only because in certain outlying spots there are no customers consuming electricity, although there is transmission equipment to be maintained. The evidence suggests that Fort Worth dis-

¹² An exception in this regard is the driver assigned to operate the Employer's only 95-foot boom truck, which is kept in the Fort Worth Area but used throughout the system.

tribution employees will service customers in these areas as consumers arrive. We thus conclude that the geographical coherence and discreteness of the Fort Worth Area support a finding that Petitioner's requested unit is appropriate. Similarly, while each official of the Employer above the local supervisory level supervises and directs employees who are engaged in equivalent operations at locations not included in the proposed unit, the Employer's operation is sufficiently decentralized for us to conclude that the employees assigned to transmission and distribution functions in the Fort Worth Area share a community of interest separate and distinguishable from that which they share with other employees of the Employer. Accordingly, we do not accept the Employer's argument that only a systemwide unit is appropriate, and, since no union seeks to represent the Fort Worth Area transmission and distribution employees in a more inclusive unit, we find that the unit requested by the Petitioner is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.¹³

The Employer maintains that the following classification of employees should be included in the unit found appropriate: in the distribution department, employees classified as storekeeper, stock clerk, head stock clerk, material coordinator, material coordinator leadman, accounting specialist, associate engineering technician, distribution clerk, senior distribution clerk, engineering clerk, student trainee, trouble specialist, meter specialist, street-light patrolman, distribution patrolman, mechanic

welder, distribution dispatcher clerk, and senior distribution dispatcher clerk; in the transmission department, employees classified as storekeeper, stock clerk, head stock clerk, associate engineering technician, student trainee, mechanic welder, and landscape specialist.

In its brief to the Board, the Petitioner has withdrawn its objection to the inclusion of distribution department storekeeper, stock clerk, head stock clerk, material coordinator, material coordinator leadman, trouble specialist, meter specialist, street-light patrolman, distribution patrolman, and mechanic welder; and of transmission department storekeeper, stock clerk, head stock clerk, mechanic welder, and landscape specialist. Accordingly, we shall include the foregoing undisputed classifications in the unit.

As to the remaining classifications, however, to whose inclusion the Petitioner maintains its objection on the ground that they are essentially office clerical positions separately supervised and working under a separate pay plan, we find the record insufficiently detailed to permit a determination at this stage of the proceeding. It appears that prior to the hearing the Petitioner did not have available a current list of employment classifications in the transmission and distribution departments and was therefore unprepared to argue for inclusion or exclusion of the 27 classifications about which it had no information. Moreover, the focus of the parties' concern was on the geographic and administrative scope of the unit rather than on job classifications and job descriptions in the unit finally determined. As a result, such evidence as was presented was too cursory to serve as a basis for a decision concerning the unit placement of employees in the disputed classifications. Accordingly, we shall permit the employees serving in the disputed classifications to vote in the election subject to challenge.

We therefore find appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act a unit consisting of the following employees of the Employer:

All hourly paid employees employed by the Employer and assigned to the Transmission and Distribution Departments in the Fort Worth Area, excluding guards, professional employees, office clerical employees, and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]¹⁴

¹³ In finding appropriate the petitioned-for unit, we reject the Employer's contention that a systemwide unit is mandated by the Board's decision in *Baltimore Gas and Electric Co.*, 206 NLRB 199 (1973), and the Fifth Circuit's opinion in *N.L.R.B. v. Pioneer Natural Gas Company*, 397 F.2d 573 (1968). While those decisions stand for the proposition that, in general, the Board will find a systemwide unit of public utility employees to be the optimum unit, the Board will find appropriate a less-than-systemwide unit where (1) there is no recent history of bargaining on a systemwide basis; (2) the proposed unit encompasses a distinct administrative or geographical subdivision; (3) the employer invests substantial autonomy in supervisors at the unit level; and (4) no union seeks to represent employees in a larger unit. See, e.g., *New England Telephone and Telegraph Company*, 249 NLRB 1166 (1980); *United Gas, Inc.*, 190 NLRB 618 (1971); *Monongahela Power Company*, 176 NLRB 915 (1969) (which unit was approved by the Fourth Circuit in a decision enforcing the Board's Order in the subsequent unfair labor practice proceeding, 76 LRRM 2316, 64 LC ¶ 11,441 (1971)). For the reasons set forth above, we find that a less-than-systemwide unit is appropriate.

Baltimore Gas and Electric, supra, is distinguishable from the instant case in that the Employer here does administer its facilities according to geographic locations; the unit sought consists of an entire division and covers a substantial geographic area; and significant personnel actions are taken by local supervisors (including initial screening of applicants for hire; the determination of whether probationary employees should be retained; the approval of single-step progression in pay grades; and the meting out of suspensions for periods up to 5 days). Similarly, *Pioneer Natural Gas Co., supra*, is distinguishable in that the unit there only consisted of a single plant unit found by the court to be a small integrated and interdependent part of the Pioneer System rather than, as here, an entire administrative unit.

¹⁴ As the unit found appropriate herein is broader than the unit originally sought by the Petitioner, the Direction of Election is conditioned upon the Petitioner's demonstrating, within 10 days from the date hereof, that it has an adequate showing of interest in the broader unit found appropriate.